

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NICOLE DEL VECCHIO and ARIANA DEL
VECCHIO, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

AMAZON.COM, INC.,

Defendant.

No. C11-366 RSL

JOINT STATUS REPORT
AND DISCOVERY PLAN

Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, Local Rule CR 16 of this Court, and this Court's April 1, 2011 Order, all parties submit this joint status report and discovery plan.

1. Nature and Complexity of the Case

Plaintiffs Nicole Del Vecchio and Ariana Del Vecchio bring this action on behalf of themselves and similarly situated persons who visited and purchased from Amazon's website and who used certain computer technology and privacy settings.

Plaintiffs allege that Amazon has intentionally programmed its website to bypass or disable plaintiffs' privacy settings and controls in plaintiffs' web browsers, including by (a) posting

misleading code in Amazon's P3P Compact Policy, affecting the scope of permissible data collection through browser cookies on plaintiffs' computers; and (b) depositing Adobe Flash Local Shared Objects (also known as "Flash cookies") on plaintiffs' computers, enabling Amazon to bypass browser cookie controls entirely.

Plaintiffs contend that Amazon's practices result in the company's obtaining and using more information about users of the amazon.com website than Amazon has a right to collect or that users have given consent to collect; and that Amazon has done so through practices that cause injury based on the value of plaintiffs' personal information and diminished performance of their computer and Internet resources. In addition, plaintiffs allege that Amazon uses their information improperly by sharing it with third-party marketers for use in distributing advertising circulars to plaintiffs via U.S. mail.

Amazon denies all wrongdoing, damages, and liability. Amazon contends that its practices were fully disclosed in its website Privacy Notice and that its collection of information about amazon.com customers was compliant with all legal requirements. Amazon also contends that plaintiffs had no expectation of privacy in their online shopping at amazon.com, and suffered no harm. Thus, Amazon denies that plaintiffs are entitled to any relief, and denies that plaintiffs' alleged claims are amenable to class treatment.

Plaintiffs believe the case involves Internet technology that is widely utilized and complex only to the extent that certain proof issues will require expert testimony. Plaintiffs do not expect that the legal issues will be unduly complex.

Amazon believes that plaintiffs' legal theories are novel and complex.

2. Preferred ADR Method

The parties prefer private mediation as the best method of ADR in this case.

3. Timing of ADR Proceeding

Plaintiffs believe mediation should take place within four months after this report is filed. Amazon believes mediation should not take place unless and until a ruling on class certification.

1 **4. Deadline for Joining Additional Parties**

2 Amazon believes that the deadline for joining additional parties should be June 30, or
3 within 21 days of the Court's ruling on Amazon's pending motion to dismiss, whichever comes
4 later. Amazon is agreeable to having the current complaint amended to include the individuals
5 who are presently plaintiffs in *Zanders et al. v. Amazon.com*, No. C11-494 RSL (W.D. Wash.)

6 Plaintiffs believe the deadline for joining additional plaintiffs should be after a decision
7 on class certification; and the deadline for joining additional defendants should be November 11,
8 2011.

9 **5. Proposed Discovery Plan**

10 **A. Rule 26(f) Conference and Rule 26(a) Initial Disclosures**

11 The parties' Rule 26(f) conference took place on April 28, 2011. Plaintiffs and Amazon
12 exchanged initial disclosures on May 6, 2011.

13 **B. Discovery Subjects; Discovery Phasing**

14 The parties will need discovery on all aspects of the complaint, including discovery from
15 each other and possibly from non-parties.

16 Plaintiffs intend to initiate narrowly targeted discovery, especially concerning the essen-
17 tial facts underlying their complaint, prior to this Court's resolution of Amazon's motion to dis-
18 miss. Plaintiffs also intend to initiate discussions concerning those essential facts in order to get
19 to the bottom of this matter more efficiently. Plaintiffs contend that this initial discovery should
20 not be limited to class-certification issues and believe that formal "phasing" is unnecessary and
21 undesirable.

22 Amazon believes that discovery should be conducted in phases, with the first phase of
23 discovery being limited to issues reasonably related to class certification and the merits of the in-
24 dividual plaintiffs' claims.

25 Amazon also believes that all discovery should be stayed until the Court has ruled on the
26 sufficiency of plaintiffs' complaint. Amazon will meet and confer with plaintiffs on this issue.

1 The parties agree that discovery of experts whose testimony relates to class certification
2 will be necessary prior to class certification proceedings, and have proposed a discovery sched-
3 ule in that regard.

4 **C. Changes to Discovery Limits**

5 The parties believe it is too early to determine whether changes should be made in the
6 limitations on discovery imposed by rule or what other limitations should be imposed.

7 **D. Management of Discovery to Minimize Expense**

8 The parties plan to cooperate with each other to minimize the expense of discovery.

9 The parties have also agreed with each other that email service of all discovery papers
10 (e.g., requests, responses, notices of deposition, etc.) is sufficient, as opposed to personal deliv-
11 ery or mail service.

12 And, the parties plan to coordinate discovery with the *Zanders et al. v. Amazon.com*, case
13 to the extent practicable.

14 **E. Other Discovery Orders**

15 The parties anticipate presenting to the Court a stipulated order regarding confidentiality
16 of discovery materials.

17 **6. Date of Completion of Discovery**

18 At present, the parties anticipate requiring six months of discovery prior to plaintiffs' mo-
19 tion for class certification and six months of discovery after the Court rules on class certification.

20 Plaintiffs propose the parties should make simultaneous disclosures of their class-
21 certification experts 120 days after commencement of discovery, with depositions of these ex-
22 perts to take place during the following 30 days and disclosure of class-certification rebuttal ex-
23 perts in the following 15 days.

24 Amazon proposes that plaintiffs make their expert disclosures within 120 days of the
25 Court's ruling on Amazon's motion to dismiss, with depositions of plaintiffs' experts to occur
26 within the following three weeks. Amazon will make its expert disclosures within 45 days of
27

plaintiffs' expert disclosures, with depositions of Amazon's experts to occur within the following three weeks.

7. Referral to Magistrate Judge

The parties agree that referring the case to a magistrate judge to conduct all proceedings, including trial and entry of judgment, is not appropriate in this case.

8. Bifurcation

At this time, the parties do not believe that the case should be bifurcated, but reserve the possibility of proposing bifurcation in the future, if appropriate.

9. Local Rules 16(e), (h), (k), (l), and 16.1

The parties agree at present that the pretrial statements and pretrial order called for by Local Rule CR 16(e), (h), (k), (l), and 16.1 should not be dispensed with, but reserve the possibility or proposing dispensing with one or more of these requirements in the future, if appropriate.

10. Suggestions for Shortening or Simplifying the Case

The parties anticipate coordinating their efforts with those in the *Zanders et al. v. Amazon.com* case to avoid redundancy. The parties are also exploring whether and how the *Zanders* case may be consolidated with or incorporated into this action.

11. Date Ready for Trial

The parties anticipate that the case will be ready for trial in December 2012.

12. Trial by Jury

Plaintiffs have requested a trial by jury.

13. Number of Trial Days Required

Plaintiffs estimate that the trial will last approximately three-to-five days.

Defendants estimate that a trial of plaintiffs' individual claims would last approximately three-to-five days and that resolution of individualized issues in a class action trial would be substantially longer, likely requiring an additional week.

14. Names, Addresses, and Telephone Numbers of Anticipated Trial Counsel

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15. Service of all Parties

The one defendant, Amazon.com, Inc., has been served.

16. Scheduling Conference

The parties do not believe that a scheduling conference is required prior to entry of a scheduling order consistent with this joint status report.

17. **Date of Filing Corporate Disclosure Statement**

Amazon, the only corporate party, filed its Rule 7.1 disclosure statement on April 28, 2011.

Dated: May 13, 2011

Respectfully submitted,

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Counsel for Defendant Amazon.com, Inc.

Certificate of Service

I certify that, on May 13, 2011, I caused this joint status report to be filed with the clerk of the court via ECF, which will sent notice of filing by email to all counsel of record.

s/ Cliff Cantor, WSBA # 17893